

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

United States of America, *et al.*,

Plaintiff,

v.

Google LLC

Defendant.

Case No. 1:23-cv-00108-LMB-JFA

The Honorable Leonie M. Brinkema

DECLARATION OF JILL HERZOG IN SUPPORT OF NON-PARTIES OMNICOM GROUP INC., DDB WORLDWIDE COMMUNICATIONS GROUP LLC, GSD&M LLC, PORTER NOVELLI PUBLIC SERVICES INC., AND OMD USA LLC'S MOTION TO SEAL CERTAIN TRIAL EXHIBITS

DECLARATION OF JILL HERZOG

I, Jill Herzog, declare as follows:

1. I am an Executive Vice President at Porter Novelli Inc., a subsidiary company of Omnicom Group Inc. (“Omnicom”). I have personal knowledge of the facts set forth herein and if called as a witness could and would testify competently to them. I make this declaration in support of Omnicom’s Motion to Seal Certain Trial Exhibits.

2. Porter Novelli Inc., through its wholly-owned subsidiary Porter Novelli Public Services Inc., (collectively, “Porter Novelli”), is a full-service public relations agency that creates, plans and executes public relations and marketing campaigns on behalf of clients. These campaigns are designed to meet each client’s specific business or awareness goals and are a product of extensive client input, market research, creative ideation and skilled execution garnered from over fifty years of experience. As a subject matter expert in the public relations and marketing space, Porter Novelli is intimately familiar with the platforms, products, and tools available to public relations and marketing clients.

3. I have been the Executive Vice President of Porter Novelli’s government practice for the last three years. As Executive Vice President, I am responsible for growth in the federal contracting space and oversee all aspects of the Centers for Medicare & Medicaid Services (“CMS”) account, from creation to strategy development to marketing and public relations activities.

4. Defendant’s Trial Exhibit No. 630 (DTX 630) is an email thread that identifies the names of ten (10) Porter Novelli employees within the To, From, and CC lines of the emails. These employees are private individuals with no connection or relevance to the present litigation or to the substance of DTX 630, which discusses optimization strategies and recommendations

for CMS's Spanish Open Enrollment Campaign in November of 2018.

5. Defendant's Trial Exhibit No. 631 (DTX 631) is an email thread that identifies the names of ten (10) Porter Novelli employees within the To, From, and CC lines of the emails. These employees are private individuals with no connection or relevance to the present litigation or to the substance of DTX 631, which discusses optimization strategies and recommendations for CMS's Spanish Open Enrollment Campaign in November of 2018.

6. Defendant's Trial Exhibit No. 1280 (DTX 1280) is an email attaching Porter Novelli's strategic communications plan PowerPoint presentation presented to CMS in May of 2022 relating to CMS's Public Health Emergency Unwinding National Outreach and Enrollment Campaign. The purpose of this presentation is to gain client alignment with Porter Novelli's proposed media plan. This presentation provides in-depth analysis and discussion on the types of media channels Porter Novelli is recommending that CMS invest in, including the purpose of each media channel, the specific content to be shared via the media channels, and Porter Novelli's recommended partners, publishers, and platforms for which to implement each aspect of the media plan. The presentation also includes recommended investment amounts based on the CMS's goals and objectives. The contents of this presentation represent Porter Novelli's proprietary and confidential trade secret approach for deriving media strategy, which provides Porter Novelli with a competitive advantage in the marketplace.

7. Defendant's Trial Exhibit No. 1381 (DTX 1381) is an email summarizing the past week's results of CMS' Open Enrollment Campaign. The summary provides an in-depth review of the week's results, including analysis on the effectiveness of different media channels and the performance of the partners, publishers, and platforms that Porter Novelli used to implement the media plan across various demographics. The summary also includes recommended

optimization strategies and updated investment amounts based on CMS's goals and objectives.

This information represents Porter Novelli's proprietary and confidential trade secret approach for deriving media strategy, which provides Porter Novelli with a competitive advantage in the marketplace.

8. Defendant's Trial Exhibit No. 1394 (DTX 1394) is an email summarizing the past week's results of CMS' Open Enrollment Campaign and attaching a monthly media flowchart prepared for CMS on November 23, 2022 for October through December 2022. The summary and flowchart provide an in-depth review of the campaign's results over the past week and several months, including analysis on the effectiveness of different media channels and the performance of the partners, publishers, and platforms that Porter Novelli used to implement the media plan across various demographics. The summary also includes recommended optimization strategies and updated investment amounts based on the CMS's goals and objectives. This information represents Porter Novelli's proprietary and confidential trade secret approach for deriving media strategy, which provides Porter Novelli with a competitive advantage in the marketplace.

9. Defendant's Trial Exhibit No. 1399 (DTX 1399) is an email summarizing the past week's results of CMS' Open Enrollment Campaign and attaching one (1) Excel spreadsheet that reflects Porter Novelli's monthly media flowchart prepared for CMS on November 30, 2022 for October through December 2022. The summary and flowchart provide an in-depth review of the campaign's results over the past week and several months, including analysis on the effectiveness of different media channels and the performance of the partners, publishers, and platforms that Porter Novelli used to implement the media plan across various demographics. The summary also includes recommended optimization strategies and updated investment amounts based on CMS's

goals and objectives. This information represents Porter Novelli's proprietary and confidential trade secret approach for deriving media strategy, which provides Porter Novelli with a competitive advantage in the marketplace.

10. The creative concepts and innovative approaches to media buying and planning differentiate Porter Novelli from other agencies in the marketplace that Porter Novelli competes with. Publicly revealing these details, encompassed in the Exhibits above, could expose these creative elements to competitors, who might then replicate or undermine Porter Novelli's innovative strategies and competitive edge. Porter Novelli's discussions, analyses, and strategic recommendations to a client regarding its media marketing have substantial economic and competitive value to Porter Novelli. Porter Novelli spends a significant amount of money and resources to develop the specialized knowledge of the media, public relations and marketing marketplace required to create commercially competitive strategy recommendations and guidance for clients.

11. Defendant's Trial Exhibit No. 1461 (DTX 1461) is an actual procurement contract and task order from CMS authorizing a one-year contract with Porter Novelli for its public relations and marketing services. The portion of the contract that Porter Novelli seeks to seal sets forth Porter Novelli's winning bid, including the overall amount that Porter Novelli is authorized to spend as part of the media plan devised for CMS, and further breaks down in a detailed, itemized list the various kinds of public relations and related services that Porter Novelli has been authorized to execute on behalf of CMS pursuant to the scope of work. In submitting its bid, Porter Novelli leveraged its (and its team members') expertise in the industry to create competitive spending allocations and recommendations across media, advertising and marketing channels. The substance of these recommendations make up the proposed full-service media, public relations and

marketing plan and determine what Porter Novelli is then authorized by CMS to spend. This proprietary information plays a significant role in Porter Novelli's success in the industry.

12. Public disclosure of Porter Novelli's proprietary information, contained throughout the above Exhibits, would be detrimental to both the CMS and Porter Novelli. Public disclosure would reveal confidential CMS information and provide insight into their marketing priorities, objectives, and goals, all of which is shaped by the work of Porter Novelli. The disclosure of CMS's unique marketing strategy would provide competing recruiting entities and Porter Novelli's competitors an inside look into how Porter Novelli operationalizes a full service media, public relations and marketing account plan for specific clients. This is the exact sort of analysis and planning upon which Porter Novelli competes to remain competitive in the market.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 26, 2024 in Rockville, Maryland.



Jill Herzog